

**ASSEMBLY BILL**

**No. 632**

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**Introduced by Assembly Member Salas**

February 21, 2007

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An act to amend Section 1278.5 of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 632, as introduced, Salas. Health care facilities: whistleblower protections.

Existing law provides for the licensure and regulation of health care facilities, as defined, by the State Department of Public Health. Under existing law, a health facility is prohibited from retaliating or discriminating against an employee of a health facility that has presented or initiated a complaint or initiated, participated, or cooperated in, an investigation or proceeding of a government entity relating to the care, services, or conditions of the facility. Existing law makes the violation of these provisions a crime and subject to the assessment of a civil penalty.

This bill would additionally prohibit a health facility, or its affiliate, from retaliating or discriminating against a physician and surgeon on its medical staff or on the medical staff of its affiliate who has complained of the care, services, or conditions of the health facility or its affiliate or assisted, as specified, a governmental agency in the investigation of those matters.

Because the bill would expand the conduct subject to criminal prosecution by extending the whistleblower protection to a physician and surgeon, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1278.5 of the Health and Safety Code is  
2     amended to read:

3     1278.5. (a) The Legislature finds and declares that it is the  
4     public policy of the State of California to encourage patients,  
5     nurses, *physicians and surgeons*, and other health care workers to  
6     notify government entities of suspected unsafe patient care and  
7     conditions. The Legislature encourages this reporting in order to  
8     protect patients and in order to assist those government entities  
9     charged with ensuring that health care is safe. The Legislature  
10    finds and declares that whistleblower protections apply primarily  
11    to issues relating to the care, services, and conditions of a facility  
12    and are not intended to conflict with existing provisions in state  
13    and federal law relating to employee and employer relations.

14    (b) (1) No health facility shall discriminate or retaliate in any  
15    manner against any patient or employee of the health facility  
16    because that patient~~or~~, employee, or any other person; has  
17    presented a grievance or complaint, or has initiated, *participated*,  
18    or cooperated in~~any~~ *an* investigation or proceeding of any  
19    governmental entity, relating to the care, services, or conditions  
20    of that facility. *No health facility or its affiliate shall discriminate*  
21    *or retaliate in any manner against a physician and surgeon on the*  
22    *medical staff of the health facility or its affiliate because the*  
23    *physician and surgeon has presented a grievance or complaint,*  
24    *or has initiated, participated, or cooperated in an investigation*  
25    *or proceeding of any governmental entity, relating to the care,*  
26    *services, or conditions of the facility or its affiliate.*

27    (2) A health facility *or its affiliate* that violates this section shall  
28    be subject to a civil penalty of not more than twenty-five thousand  
29    dollars (\$25,000). The civil penalty shall be assessed and recovered  
30    through the same administrative process set forth in Chapter 2.4

1 (commencing with Section 1417) for long-term health care  
2 facilities.

3 (c) Any type of discriminatory treatment of a patient by whom,  
4 or upon whose behalf, a grievance or complaint has been submitted,  
5 directly or indirectly, to ~~any~~ a governmental entity or received by  
6 a health facility administrator within 180 days of the filing of the  
7 grievance or complaint, shall raise a rebuttable presumption that  
8 the action was taken by the health facility in retaliation for the  
9 filing of the grievance or complaint.

10 (d) Any discriminatory treatment of an employee *or of a*  
11 *physician and surgeon* who has presented a grievance or complaint,  
12 or has initiated, participated, or cooperated in ~~any~~ an investigation  
13 or proceeding of any governmental entity as specified in  
14 subdivision (b), if the health facility had knowledge of the  
15 ~~employee's~~ initiation, participation, or cooperation *by the employee*  
16 *or by the physician and surgeon*, shall raise a rebuttable  
17 presumption that the discriminatory action was taken by the health  
18 facility in retaliation, if the discriminatory action occurs within  
19 120 days of the filing of the grievance or complaint. For purposes  
20 of this section, "discriminatory treatment of an employee *or of a*  
21 *physician and surgeon*" shall include discharge, demotion,  
22 suspension, any other unfavorable changes in the terms or  
23 conditions of employment *or of the privileges of the physician and*  
24 *surgeon at the health facility or its affiliate*, or the threat of any of  
25 these actions.

26 (e) The presumptions in subdivisions (c) and (d) shall be  
27 presumptions affecting the burden of producing evidence as  
28 provided in Section 603 of the Evidence Code.

29 (f) Any person who willfully violates this section is guilty of a  
30 misdemeanor punishable by a fine of not more than twenty  
31 thousand dollars (\$20,000).

32 (g) An employee who has been discriminated against in  
33 employment pursuant to this section shall be entitled to  
34 reinstatement, reimbursement for lost wages and work benefits  
35 caused by the acts of the employer, and the legal costs associated  
36 with pursuing the case. *A physician and surgeon who has been*  
37 *discriminated against pursuant to this section shall be entitled to*  
38 *reinstatement, reimbursement for lost income resulting from any*  
39 *change in the terms or conditions of his or her privileges caused*

1 *by the acts of the facility or its affiliate, and the legal costs*  
2 *associated with pursuing the case.*

3 *(h) For purposes of this section, “affiliate” means a health*  
4 *facility that is directly or indirectly, through one or more*  
5 *intermediaries, controlled by another health facility.*

6 ~~(h)~~

7 *(i) This section shall not apply to an inmate of a correctional*  
8 *facility or juvenile facility of either the Department of the Youth*  
9 ~~*Authority or the Department of Corrections and Rehabilitation,*~~  
10 *or to an inmate housed in a local detention facility including a*  
11 *county jail or a juvenile hall, juvenile camp, or other juvenile*  
12 *detention facility.*

13 ~~(i)~~

14 *(j) This section shall not apply to a health facility that is a*  
15 *long-term health care facility, as defined in Section 1418. A health*  
16 *facility that is a long-term health care facility shall remain subject*  
17 *to Section 1432.*

18 ~~(j)~~

19 *(k) Nothing in this section abrogates or limits any other theory*  
20 *of liability or remedy otherwise available at law.*

21 SEC. 2. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.